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OFFICE OF PETITIONS

In re Application of :
Lorincz et al. :
Application No. 09/210,031 : DECISION ON
Filed: December 11, 1998 : REQUEST FOR REFUND
Atty Docket No. 2629-4005US1 :
:

This is in response to the request for refund, filed April 5, 2005, which is being treated under the provisions of 37 CFR 1.26.

The request for refund is **DISMISSED**.

A final rejection was mailed in the above-identified application on October 10, 2003. This Office action set a three-month shortened statutory period for response, with extensions of time obtainable under § 1.136(a). In response, on January 9, 2004, applicants timely filed a Notice of Appeal.

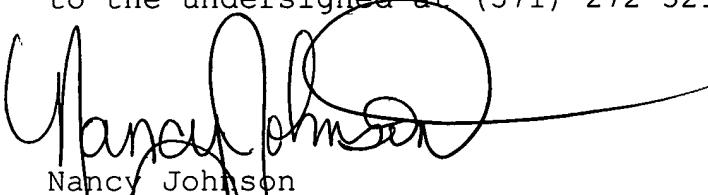
37 CFR § 1.26 Refunds.

The Director may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

The petition was filed promptly. However, the record does not support a conclusion that the appeal fee was paid by mistake or in excess of that required within the meaning of 37 CFR 1.26.

The instant application was under final rejection. A reply under 37 CFR 1.113 to a final rejection must include the appeal from, or cancellation of, each rejected claim. The filing of an amendment after final rejection, whether or not it is entered, does not stop the running of the statutory period for reply to the final rejection unless the examiner holds the claims to be in condition for allowance. Accordingly, if a Notice of Appeal has not been filed properly within the period for reply, or any extension of this period obtained under either 37 CFR 1.136(a) or (b), the application will become abandoned. To avoid abandonment of the application, applicants chose to file a Notice of Appeal (with the required fee). Applicants' thought now, that the filing of the Notice of Appeal was unnecessary, does not entitle them to a refund.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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